



JTPA

Number: D95-1

Serving the People of California

DIRECTIVE

Date: July 7, 1995

69:26:smd

TO: SERVICE DELIVERY AREA ADMINISTRATORS
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS
JTPD PROGRAM OPERATORS
EDD JOB SERVICE OFFICE MANAGERS
JTPD STAFF

SUBJECT: PROCEDURES FOR REQUESTING WAIVERS TO PROVISIONS OF
THE JTPA REGULATIONS

EXECUTIVE SUMMARY

Purpose

This Directive establishes State policy and procedures for the request of waivers to provisions of the Job Training Partnership Act (JTPA) regulations.

Scope

This Directive applies to all Service Delivery Area (SDA) Administrative Entities in California, and to other entities contracting directly with the State of California, Employment Development Department (EDD) to operate programs funded under JTPA.

Regulatory provisions subject to the waiver process described in this Directive are limited to those regulations contained in Parts 626, 627, 628, and 631 of the JTPA Final Rule.

This Directive does not cover requests for waiver to JTPA statutory provisions authorized by Title V of the School-to-Work Opportunities Act of 1994.

Effective Date

This Directive is effective upon its date of issue.

REFERENCES

- 20 CFR 627.201 (September 2, 1994)
- Department of Labor (DOL) Training and Employment Guidance Letter (TEGL) 7-94 (March 20, 1995), Subject: WAIVERS OF JOB TRAINING PARTNERSHIP ACT (JTPA) REGULATORY PROVISIONS

- JTPA Information Bulletin 95-59 (April 14, 1995), Subject: WAIVERS OF JTPA REGULATORY PROVISIONS

STATE-IMPOSED REQUIREMENTS

This Directive contains State-imposed requirements which are shown in ***bold, italic*** typeface.

FILING INSTRUCTIONS

Retain this Directive until further notice.

BACKGROUND

The JTPA Final Rule includes a new provision, Section 627.201, that allows Governors to request waivers of some provisions in the regulations and enables the Secretary of Labor to approve waivers for periods up to four years. The specific language in that provision reads:

“(a)(1)The Governor may request, and the Secretary may grant, a waiver of specific provisions of these regulations to the extent that such request is consistent with the provisions of the Act.

(2)In requesting a waiver under paragraph (a)(1) of this section, the Governor shall demonstrate how it will either improve the targeting of services to the hard to serve, increase the level of basic and occupational skills training provided by the JTPA program in the State, contribute to the provision of academic enrichment services to youth, promote coordination of JTPA programs with other human resource programs, or substantially improve the job placement outcomes of the JTPA program.

(3)Waivers granted by the Secretary shall be effective for no more than four years from the date the waiver is granted.”

The DOL issued TEGL 7-94 on March 20, 1995, that provides further federal guidance on the waiver process. The Preamble to the Final Rule and the TEGL explain that the Secretary of Labor has no authority to waive statutory requirements under this provision. The Secretary may, however, waive provisions of the regulations that expand upon, interpret, or explicate statutory requirements. This regulation permits waivers of any JTPA regulatory provision as long as the waiver does not affect the basic statutory requirements and if it is shown that the waiver will improve services, increase skill or educational attainment, promote coordination, or substantially improve the job placement outcomes of the JTPA program.

Last fall, the Job Training Partnership Division (JTPD) convened a work group with SDA representatives to make recommendations on the waiver process for the State’s consideration. Although the work group deferred its original charge in order to focus on early implementation of the Final Rule and has not formally reconvened, work group members contributed to the development of these waiver procedures. This document reflects the comments and suggestions received from work group members.

POLICY

It is the policy of the State of California to review any request for waiver of JTPA regulatory provisions that is submitted in accordance with the procedures established by this Directive; and, within 45 days of receiving such waiver request, to ascertain its merits and either submit the request to the Secretary of Labor or return it to the originator with reasons for its return.

PROCEDURES

The State has established the following procedures for the submission of requests for waiver of the JTPA regulations, in accordance with provisions of 20 CFR 627.201 and TEGL 7-94.

I. Waiver Request Procedures

A. Who may Submit Waiver Requests

1. ***The State will accept requests for waiver from:***
 - a. ***Individual SDA Administrative Entities;***
 - b. ***Two or more SDA Administrative Entities, that share a need for such waiver (e.g., SDAs with special grants or that share a common problem) acting jointly; and***
 - c. ***Entities contracting directly with the State of California, Employment Development Department to operate programs funded under Titles I, II, or III of JTPA.***
2. ***The State will not accept requests submitted by service providers (e.g., local school districts or community based organizations) that do not contract directly with EDD to operate JTPA-funded programs.***

B. Scope of Waiver Requests

1. Regulatory provisions subject to the waiver process described in this Directive are limited to those regulations contained in Parts 626, 627, 628, and 631 of the JTPA Final Rule.
 - a. The specific regulatory provision for which waiver is requested must be cited.
 - b. If the waiver request is for only part of a cited provision, the specific language from which relief is sought must be quoted.
 - c. ***Specific examples of the barriers or problems created by the current regulation must be clearly described.***
2. Waiver requests must specify the proposed duration of the waiver and a proposed effective date.
 - a. Proposed duration of requested waivers must correspond to the anticipated need for the waiver.

- b. Maximum period of waiver is four years from date of approval by the Secretary of Labor.
 - c. ***Waiver requests must explain the requested duration.***
 - d. ***Duration of waiver requests for specific projects cannot exceed the duration of the project and its associated start-up and closeout period.***
 - e. Proposed effective dates must take into consideration the minimum 90 days' lead time needed for review by the State (45 days) and DOL (45 days). The DOL will not grant waivers retroactively.
- 3. The waiver request must indicate what will replace the regulation if approval is granted.
 - a. If the regulation is to be completely waived, with no alternative, that must be indicated.
 - b. If appropriate, the request must specify the proposed alternative to be used in place of the waived regulation (e.g., requests for waivers of a regulatory time requirement or percentage should include an alternative to the requirement or percentage).
- 4. Requests for waiver of regulatory provisions must demonstrate how the waiver of the regulatory provision would do one or more of the following for the project or program specified in accordance with Item 5 below.
 - a. Improve targeting of services to the hard-to-serve;
 - b. Increase the level of basic and occupational skills training provided by the JTPA program in the State;
 - c. Contribute to the provision of academic enrichment services to youth;
 - d. Promote coordination of JTPA programs with other human resource programs; or
 - e. Substantially improve job placement outcomes of the JTPA program.
- 5. Requested waivers of regulatory provisions may apply to:
 - a. A specific project or projects (e.g., a specific program for high-risk youth);
 - b. A program component (e.g., all Title II-A programs in the SDA);
 - c. All JTPA programs in the SDA;
 - d. A joint project operated by two or more SDAs;
 - e. Multiple projects with common funding sources operated by more than one SDA (e.g., SDAs operating Nontraditional Employment for Women, One-Stop, or School-to-Work projects); or

- f. All JTPA programs in multiple SDAs that share a common need for the waiver (common labor market, project, contract, etc.).
 6. Waiver requests must specify how the SDA Administrative Entity or other appropriate entity will monitor and evaluate the progress and performance of the affected project or program under a granted waiver. ***Where multiple SDA Administrative Entities request a waiver, the role of each participating SDA Administrative Entity in monitoring and evaluating the outcomes must be specified.***
- C. Unacceptable Waiver Requests

The State will not accept requests for waiver of:

1. JTPA statutory requirements or other Federal statutory provisions impacting on JTPA (e.g., Fair Labor Standards Act [FLSA] provisions).
2. ***State law;***
3. “Contractual” requirements under Employment and Training Administration (ETA) Grant Officer authority; (In the case of Title III National Reserve Account and One-Stop projects, 20 CFR 627.201 cannot be used to waive the Grant Officer’s authority in the administration of a specific Title III or One-Stop grant.);
4. Regulatory provisions where the Governor already possesses the authority to adjust or waive certain requirements ***or any state policies established in accordance with this authority, including policies established under the auspices of the State Job Training Coordinating Council (SJTCC);*** and
5. Administrative processes which are outside of the specific purview of the JTPA regulations, including the Standardized Program Information Report (SPIR) requirements established pursuant to JTPA §165 or regulatory provisions established by the Directorate of Civil Rights pursuant to JTPA §167(g).

II. State Responsibilities

A. Review of Requests

1. The State will review requests received in accordance with the requirements established in this Directive, and make a determination of appropriateness of the waiver request within 30 days of receipt.
2. During the 30-day period, the State may need to seek clarification or additional information from the requesting entity. In some cases, the need for additional information will delay the review. When this occurs, the State will advise the requesting entity and will provide an estimated date for determination of appropriateness.

B. Disposition of Requests

1. If determined appropriate, requests will be submitted to DOL within 45 days of initial receipt, unless the need to obtain additional

information delays the determination. The State will notify the requesting entity of the submission to DOL.

2. All other requests deemed appropriate will be submitted to DOL within 15 days of the determination of appropriateness, and the State will notify the requesting entity of the submission to DOL.
3. Requests deemed inappropriate will be returned to the submitting entity within 45 days of original receipt (or by the date established in A. 2. above) with an explanation for its rejection.

C. Approval Status

1. The State will immediately notify the requesting entity of approval or disapproval of the waiver request when received from DOL.
2. Approved waivers will become part of the requesting entity's subgrant agreement and the State will unilaterally modify the subgrant agreement to incorporate the change.
3. Job Training Plans and Substate Plans will not need to be adjusted or modified to incorporate the change.

D. Dispute Resolution

1. The opportunity to request a waiver is discretionary and, as such, there is no direct appeal to DOL for SDA waiver requests that are not accepted by the State.
2. The decision by the State to submit waiver requests to DOL is also discretionary and, as such, there is no appeal to the State for waiver requests rejected as not appropriate, nor is there any appeal to the State for entities whose requests for waiver are not considered by the SDA Administrative Entity.
3. In the event that a waiver request submitted to the State is rejected, the SDA Administrative Entity or other entity may address the deficiencies resulting in the request being rejected and resubmit it for further consideration. Such requests for reconsideration will be treated and responded to as another waiver request from the SDA Administrative Entity.
4. In the event that a waiver request submitted by the State to DOL is disapproved, the State will determine whether to correct identified deficiencies and resubmit the request to DOL.

III. DOL Responsibilities

Refer to TEGL 7-94 (attachment to JTPA Information Bulletin 95-59) for information about DOL's review and consideration of waiver requests.

ACTION

1. Bring this Directive to the attention of appropriate staff.
2. Review the JTPA Final Rule to determine the need for waiver of regulatory provisions.

3. Establish local procedures for the receipt and submission to the SDA Administrative Entity or other appropriate entity of JTPA regulatory waiver requests from service providers, if necessary.
4. Coordinate with other SDA Administrative Entities to determine whether to submit joint waiver requests to the State.
5. Prepare and submit waiver requests as identified and as needed, in accordance with this Directive.

To submit a waiver request, SDA Administrative Entities and other appropriate entities identified in Item I. A., above, should:

- a. Prepare a separate request which contains all the elements specified under Item B., above, in the order listed, for each regulatory provision for which waiver is sought;
- b. Ensure that requests are signed by the SDA Administrator or, in the case of joint requests, by the administrators of all affected SDA Administrative Entities or, in the case of entities contracting with EDD, by the individual with signatory authority; and
- c. Send the completed and signed request(s)—a single cover letter for multiple requests is acceptable—to:

Kathy Sage, Chief
Job Training Partnership Division
Employment Development Department
P.O. Box 826880, MIC 69
Sacramento CA 94280-0001
Attention: Policy Guidance Unit

INQUIRIES

Please direct inquiries about this Directive to Georganne Pintar, Manager of the Policy Guidance Unit, at (916) 654-7611, or to your assigned Field Representative or Grant Manager.

/S/ KATHY SAGE
Chief